UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
MAY 30 2017
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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED MAY 30 2017
CLERK

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARINE WHOLESALE AND WAREHOUSE CO. **727 West Capitol Drive** **San Pedro, California 90731,** **Petitioner,** **v.** **DEPARTMENT OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU,** **Respondent**	**Petition for Review** **17-1140**

Marine Wholesale and Warehouse Co., petitioner, hereby petitions the Court for review of the Order of the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau ("TTB") revoking petitioner's Wholesaler's Basic Permit (CA-P-8736) and Importer's Basic Permit (CA-I-4940), entered on March 31, 2017. A copy of the challenged order is attached to this petition.

ORIGINAL

Respectfully submitted,

NEVILLE PETERSON LLP
Counsel for Petitioners
1400 16th Street, N.W.
Washington, D.C. 20036
(202) 861-2959
(202) 861-2924 (Fax)

By /s/ Michael K. Tomenga

Michael K. Tomenga
John M. Peterson
Peter J. Bogard

May 30, 2017

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
8002 FEDERAL OFFICE BUILDING
550 MAIN STREET
CINCINNATI, OHIO 45202
March 31, 2017

502030400:SLH
5210
95-2128187
CA-I-4940
CA-P-8736
EW-CA-5

CERTIFIED MAIL
RECEIPT REQUESTED

Marine Wholesale & Warehouse Co.
727 West Capitol Drive
San Pedro, CA 90731

Re: Notice to Cease and Desist

Mr. Robert L Hartry:

The Alcohol and Tobacco Tax and Trade Bureau ("TTB") has reason to believe that, based on an unreported change in control occurring on December 15, 2012, Marine Wholesale & Warehouse Co., (Marine) has been engaging in business as an Export Warehouse Proprietor without the required permit issued under the Internal Revenue Code of 1986 ("IRC"), Title 26 U.S.C. as amended. See 26 U.S.C. § 5713. TTB has further reason to believe that, based on the unreported change in control noted supra, Marine has been engaging in the business of wholesaling and/or importing beverage alcohol without valid Federal Alcohol Administration Act ("FAA Act"), Title 27 U.S.C. as amended, Basic Permits. You are hereby advised that such activities violate federal law. Continued operation without the required permits subjects Marine to potential civil and/or criminal penalties.

In accordance with Title 27, Code of Federal Regulations (C.F.R.), section 44.107, where the issuance, sale, or transfer of the stock of a corporation, operating as an export warehouse proprietor, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate proprietor shall, within 30 days after the change occurs, make application for a new permit; otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the proprietor shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of 27 C.F.R. §§ 44.146 and 44.151, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

In accordance with 27 U.S.C. §204(g) and 27 C.F.R. §1.44 no Basic Permit shall be leased, sold, or otherwise voluntarily transferred, and, in the event of such lease, sale, or other voluntary transfer, such Basic Permit shall automatically terminate thereupon. If any Basic Permit is transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly whether by stock ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of 30 days thereafter: provided, that if within such 30-day period application for a new Basic Permit is made by the transferee or permittee, respectively, then the outstanding Basic Permit shall continue in effect until such time as the application is finally acted upon.

Marine's failure to comply with the statutory and regulatory requirements outlined above resulted in the automatic termination of the following permits which the company previously held: Export Warehouse Proprietor (EW-CA-5), Wholesaler's Basic Permit (CA-P-8736) and Importer's Basic Permit (CA-I-4940). As such, Marine has been operating unlawfully within these regulated industries since January 15, 2013.

Because Marine lacks the required permits, Marine is not authorized to engage in any of the activities authorized by those permits. Continued operations as such subjects Marine to all applicable IRC and FAA Act criminal and/or civil penalties.

If you have any questions, please call Specialist Stacy Houston at (877)-882-3277 or (513)-684-6979. You may also write to the letterhead address or email stacy.houston@ttb.gov.

Sincerely,

Thurla F. Skora

Digitally signed by Thurla F. Skora
DN: c=US, o=U.S. Government, ou=Department of the Treasury, ou=Alcohol and Tobacco Tax and Trade Bureau, ou=People, serialNumber=101275, cn=Thurla F. Skora
Date: 2017.03.31 09:23:55 -04'00'

Robert Targ

From: Jerry Anderson <jerrya@hartryinc.com>
Sent: Monday, April 03, 2017 6:28 PM
To: Robert Targ
Cc: Michael Rosen
Subject: Fwd: Please call me immediately about the attached came certified mail
Attachments: 3547_001.pdf

Importance: High

Hi Bob,

Andy from our office sent this to me. We gave the ownership breakdown to them when they were doing their audit in October of 2014 and they did not say anything to us during the 30 days after. Now they want us to stop selling product? Please let me know what we should do.

Regards,
Jerry

Begin forwarded message:

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT

FILED MAY 30 2017

CLERK

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT

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CIVIL DOCKETING STATEMENT

All Cases Other than Administrative Agency Cases (To be completed by appellant)

1. CASE NO. 17- 17-1140
2. DATE DOCKETED: May 30, 2017
3. CASE NAME (lead parties only) Marine Wholesale & Warehousin v. Department of Treasury
4. TYPE OF CASE: ☐ District Ct - ○ US Civil ○ Private Civil ○ Criminal ○ Bankruptcy
   ☐ Bankruptcy - if direct from Bankruptcy Court ☒ Original proceeding
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ○ Yes ◉ No
   If YES, cite statute ___
6. CASE INFORMATION:
   a. District Court Docket No. — Civil Action ___; Criminal ___; Miscellaneous Agency action
      Bankruptcy Court Docket No. — Bankruptcy ___; Adversary ___; Ancillary ___
      Tax Court Docket No. — Tax ___
   b. Review is sought of:
      ☒ Final Order ☐ Interlocutory Order appealable as of right ☐ Interlocutory Order certified for appeal
   c. Name of judge who entered order being appealed:
      Judge N/A Magistrate Judge N/A
   d. Date of order(s) appealed (use date docketed): March 31, 2017 e. Date notice of appeal filed: May 30, 2017
   f. Has any other notice of appeal been filed in this case? ○ Yes ◉ No If YES, date filed: ___
   g. Are any motions currently pending in trial court? ○ Yes ◉ No If YES, date filed: ___
      If YES, identify motion ___
   h. Has a transcript of proceedings been ordered pursuant to FRAP 10(b)? ○ Yes ◉ No
      If NO, why not? No agency proceedings were conducted before issuance of challenged decision.
   i. Has this case been before the Court under another appeal number? ○ Yes Appeal # ___ ◉ No
   j. Are any cases involving the same underlying order or, to counsel's knowledge, involving *substantially the same issue*, currently pending before the District Court, this Court, another Circuit Court, or the Supreme Court?
      ○ Yes ◉ No If YES, give each case's court and case name, and docket number:
   k. Does this case turn on validity or correct interpretation or application of a statute? ◉ Yes ○ No
      If YES, give popular name and citation of statute 27 USC 204(h) Federal Alcohol Administration Act
7. Have the parties attempted to resolve issues in this case through arbitration, mediation, or another alternative for dispute resolution? ○ Yes ◉ No If so, provide program name and participation dates

Signature /s/ John M. Peterson Date May 30, 2017
Name of Party Marine Wholesale & Warehouse Inc.
Name of Counsel for Appellant/Petitioner Neville Peterson LLP
Address 1400 16th Street N.W., Suite 350, Washington DC 20036
Phone (202) 861-2959 Fax (202) 861-2924

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement. Attach a certificate of service to this form.

USAC Form 42
August 2009 (REVISED)

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MARINE WHOLESALE AND WAREHOUSE CO.
727 West Capitol Drive
San Pedro, California 90731,

Petitioner,

v.

DEPARTMENT OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU,
1310 G Street, N.W., Box 12
Washington D.C. 20005

Respondent

---X

Petition for Review

17-1140

CERTIFICATE OF SERVICE

I hereby certify that a copy of the annexed petition was filed by first-class mail, postage prepaid, upon:

Administrator
United States Department of the Treasury
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street, N.W. Box 12
Washington D.C. 20005

/s/ Peter J. Bogard
NEVILLE PETERSON LLP
1400 16th Street, N.W., Suite 350
Washington, D.C. 20036
(202) 861-2959
(202) 861-2924 (Fax)
Counsel for Petitioner

May 30, 2017